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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,053	04/14/2004	Eric Lawrence Barsness	ROC920030340US1	6104
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MADAMBA, GLENFORD J				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/824,053

Applicant(s)

BARNES ET AL.

Examiner

Glenford Madamba

Art Unit

2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2, 4, 7-10, 12, 14-18, 20, 22, 25-28, 30 and 33-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Abrams, U.S. Patent Publication US 2002/0166117 A1.

As per Claims 1, 16, 17, 18, 33, Abrams discloses a method for determining a cost for using a standby resource in a computer system, wherein the standby resource is activated in response to a resource requirement, the method comprising:

automatically determining a cause of the resource requirement (e.g., increased / decreased demand for “on-demand” computational resources) [Abstract]; and

determining a cost for using the standby resource according to the determined cause (e.g., ‘charging fees’ based on the amount of resources utilized to satisfy needs

of the application, where 'charges' are based on a 'metered amount' of computational resources utilized in processing provider applications) [Abstract].

Claims 16, 17 and 18 recite the same limitations as claim 1, are distinguished only by their statutory category, and thus rejected accordingly. Claim 33 recites the same limitations as claim 1, but includes the additional limitation of a signal bearing medium bearing the program code, which is also disclosed by Abrams (e.g., hard disk, RAM, ROM, CD-ROM, Optical memory, etc.) [0062], and thus rejected accordingly.

As per Claims 2 and 20, Abrams discloses the method of claim 1, further comprising billing (e.g., fee, charge) a user according to the determined cost [0019] (e.g., 'cost') [0054].

Claim 20 recites the same limitations as claim 2, is distinguished only by statutory category, and thus rejected accordingly.

As per Claims 4 and 22, Abrams discloses the method of claim 1, wherein determining the cost for using the standby resource further includes automatically determining the cost [Abstract] [0052-0054].

Claim 22 recites the same limitations as claim 4, is distinguished only by statutory category, and thus rejected accordingly.

Art Unit: 2100

As per Claims 7 and 25, Abrams discloses the method of claim 6, wherein determining the cost for using the standby resource further includes computing a bill using the billing rate and a time measurement (e.g., 'metered' fee or charge amount) (e.g. 'customers' and 'time') [Figs. 2-4, 22].

Claim 25 recites the same limitations as claim 7, is distinguished only by statutory category, and thus rejected accordingly.

As per Claims 8 and 26, Abrams discloses the method of claim 1, wherein determining the cost for using the standby resource further includes recording at least one of a time the standby resource was activated and a subsequent time that the standby resource was inactivated (e.g., 'metered' fee or charge amount) (e.g. 'customers' and 'time') [Figs. 2-4, 22].

Claim 26 recites the same limitations as claim 8, is distinguished only by statutory category, and thus rejected accordingly.

As per Claims 9 and 27, Abrams discloses the method of claim 1, wherein determining the cause of the resource requirement further includes detecting a performance problem (e.g., 'Demand Exceeding 1st Threshold' 782) (e.g., 'Capacity at Limit?' → 'YES' 784) [Fig. 20].

Claim 27 recites the same limitations as claim 9, is distinguished only by statutory category, and thus rejected accordingly.

As per Claims 10 and 28, Abrams discloses the method of claim 1, wherein determining the cause of the resource requirement further includes retrieving encoded adjustment data from a memory in communication with the computer (e.g, metering module 464 collects 'data' from the compute modules regarding 'usage' {of resources}) [0095].

Claim 28 recites the same limitations as claim 10, is distinguished only by statutory category, and thus rejected accordingly.

As per Claim 12, Abrams discloses the method of claim 1, wherein determining the cost for using the standby resource further includes determining a reduced rate cost (e.g. 'Demand Below Threshold?' 790 →, Deactivate Instance 792, amount to Charge 816) [Fig. 20 & 21].

As per Claim 14, Abrams discloses the method of claim 1, wherein determining the cause of the resource requirement further includes determining an occurrence of a failure (e.g., 'higher reliability' by working around 'failures') [0064].

As per Claim 15, Abrams discloses the method of claim 14, wherein determining the occurrence of the failure further includes determining the occurrence from a group consisting of: a disk drive failure, a bug, a power loss, an indication of performance, an ineffective program fix, a user related error, a hardware related error and a software

Art Unit: 2100

related error (e.g., 'Response time exceeding limits?' 774, 'Capacity at Limits?' 776, 'Demand exceeding / below threshold?' 782 /790) [Fig. 20].

As per Claim 30, Abrams discloses the apparatus of claim 18, wherein the computer comprises part of a clustered computer system (e.g., distributed network / system) [Abstract] [Fig. 6] [0032].

As per Claim 34, Abrams discloses the program product of claim 33, wherein the signal bearing medium includes at least one of a recordable medium and a transmission-type medium (e.g., hard disk, RAM, ROM, CD-ROM, Optical memory, etc.) [0062].

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3, 5, 6, 11, 13, 21, 23, 24, 29, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrams in view of Fackre et al (hereinafter Fackre), U.S. Patent Publication US 2004/0030575 A1.

As per Claim 3 and 21, Abrams in view of Fackre discloses the method of claim 1, wherein determining the cause of the resource requirement further includes correlating a code indicative of the cause to a charge indicator used to determine the cost.

With regards to the claims, while Abrams discloses substantial features of the invention, the additionally recited feature of the method wherein determining the cause of the resource requirement further includes correlating a code indicative of the cause to a charge indicator used to determine the cost is taught by Fackre in a related endeavor.

Fackre discloses as his invention a research cost recovery and auditing system and method [0002]. As part of his invention, Fackre discloses a billing module that manages billing information for network files (within a library or a private resources folder). Specifically, Fackre discloses the additionally recited feature of the method, wherein determining the cause of the resource requirement further includes correlating a code indicative of the cause to a charge indicator used to determine the cost (e.g., 'billing code' associated with cost of a 'resource') [0024] [0029-0032].

It would thus be obvious to one of ordinary skill in the art at the time of the invention to combine/modify Abrams's invention, with the above said feature, as disclosed by Fackre, for the motivation of providing a method and system that advantageously quantifies and allocates cost to clients in proportion to their actual

usage (of resources), whether a user is concerned about the soft costs of lost productivity or the hard costs of costly subscription sites. [0006-0009].

Claim 21 recites the same limitations as claim 3, is distinguished only by statutory category, and thus rejected accordingly.

As per Claims 5 and 23, Abrams in view of Fackre discloses the method of claim 1, wherein determining the cause of the resource requirement further includes retrieving a code associated with the cause from an electronic log.

With regards to the claims, while Abrams discloses substantial features of the invention, the additionally recited feature of the method wherein determining the cause of the resource requirement further includes retrieving a code associated with the cause from an electronic log is taught by Fackre in a related endeavor.

Fackre discloses as his invention a research cost recovery and auditing system and method [0002]. As part of his invention, Fackre discloses a billing module that manages billing information for network files (within a library or a private resources folder). Specifically, Fackre discloses the additionally recited feature of the method, wherein determining the cause of the resource requirement further includes retrieving a code associated with the cause from an electronic log (e.g., 'billing code' associated with cost of a 'resource') (Database / Tables) [0024] [0029-0032].

It would thus be obvious to one of ordinary skill in the art at the time of the invention to combine/modify Abrams's invention, with the above said feature, as

disclosed by Fackre, for the motivation of providing a method and system that advantageously quantifies and allocates cost to clients in proportion to their actual usage (of resources), whether a user is concerned about the soft costs of lost productivity or the hard costs of costly subscription sites. [0006-0009].

Claim 23 recites the same limitations as claim 5, is distinguished only by statutory category, and thus rejected accordingly.

As per Claims 6 and 24, Abrams in view of Fackre discloses the method of claim 5, wherein determining the cost for using the standby resource further includes correlating the code to a billing rate.

With regards to the claims, while Abrams discloses substantial features of the invention, the additionally recited feature of the method wherein determining the cost for using the standby resource further includes correlating the code to a billing rate is taught by Fackre in a related endeavor.

Fackre discloses as his invention an research cost recovery and auditing system and method [0002]. As part of his invention, Fackre discloses a billing module that manages billing information for network files (within a library or a private resources folder). Specifically, Fackre discloses the additionally recited feature of the method, wherein determining the cost for using the standby resource further includes correlating the code to a billing rate (e.g., Fixed / Variable Resource Costs) [0024] [0029-0032].

It would thus be obvious to one of ordinary skill in the art at the time of the invention to combine/modify Abrams's invention, with the above said feature, as disclosed by Fackre, for the motivation of providing a method and system that advantageously quantifies and allocates cost to clients in proportion to their actual usage (of resources), whether a user is concerned about the soft costs of lost productivity or the hard costs of costly subscription sites. [0006-0009].

Claim 24 recites the same limitations as claim 6, is distinguished only by statutory category, and thus rejected accordingly.

As per Claim 11 and 29, Abrams in view of Fackre discloses the method of claim 1, wherein determining the cause of the resource requirement further includes recording a code relating to the cause in an electronic log.

With regards to the claims, while Abrams discloses substantial features of the invention, the additionally recited feature of the method wherein determining the cause of the resource requirement further includes recording a code relating to the cause in an electronic log is taught by Fackre in a related endeavor.

Fackre discloses as his invention a research cost recovery and auditing system and method [0002]. As part of his invention, Fackre discloses a billing module that manages billing information for network files (within a library or a private resources folder). Specifically, Fackre discloses the additionally recited feature of the method, wherein

determining the cause of the resource requirement further includes recording a code relating to the cause in an electronic log (e.g., 'billing code' associated with cost of a 'resource') (Database / Tables) [0024] [0029-0032].

It would thus be obvious to one of ordinary skill in the art at the time of the invention to combine/modify Abrams's invention, with the above said feature, as disclosed by Fackre, for the motivation of providing a method and system that advantageously quantifies and allocates cost to clients in proportion to their actual usage (of resources), whether a user is concerned about the soft costs of lost productivity or the hard costs of costly subscription sites. [0006-0009].

Claim 29 recites the same limitations as claim 11, is distinguished only by statutory category, and thus rejected accordingly.

As per Claims 13 and 31, Abrams in view of Fackre discloses the method of claim 1, wherein determining the cause of the resource requirement further includes retrieving at least one of a code and adjustment data from a remote memory.

Claims 13 and 31 recites the same limitations as claims 5 and 10 combined, and is accordingly rejected on the same basis.

3. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abrams in view of Swildens et al (hereinafter Swildens), U.S. Patent Publication US 2005/0228856 A1.

As per Claim 19, Abrams in view of Swildens discloses the apparatus of claim 18, wherein the computer is selected from a group consisting of at least one of a billing computer and a client computer.

With regards to the claim, while Abrams discloses substantial features of the invention, such as the computer belonging to a group (e.g., distributed network / computing system) [Fig. 6] the additionally recited feature of the apparatus wherein the computer is selected from a group consisting of at least one of a billing computer and a client computer is taught by Swildens in a related endeavor.

Swildens discloses as his invention an research cost recovery and auditing system and method [0002]. As part of his invention, Swildens discloses a billing module that manages billing information for network files (within a library or a private resources folder). Specifically, Swildens discloses the additionally recited feature of the method, the apparatus wherein the computer is selected (e.g., Billing Manager 208) [Figs. 2 & 5].

It would thus be obvious to one of ordinary skill in the art at the time of the invention to combine/modify Abrams's invention, with the above said feature, as disclosed by Swildens, for the motivation of providing a method and system that advantageously quantifies and allocates cost to clients in proportion to their actual usage (of resources), whether a user is concerned about the soft costs of lost productivity or the hard costs of costly subscription sites [0006-0009].

4. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abrams in view of Swildens et al (hereinafter Swildens), U.S. Patent Publication US 2005/0228856 A1 and in further view of Nguyen, U.S. Patent Publication US 2003/0172145 A1.

As per Claim 32, Abrams in view of Swildens and in further view of Nguyen discloses the apparatus of claim 18, wherein the program code is configured to use information encoded within a program temporary fix to determine the cost for using the standby resource.

With regards to the claim, while the combination of Abrams and Swildens discloses substantial features of the invention, the additionally recited feature of the apparatus wherein the program code is configured to use information encoded within a program temporary fix to determine the cost for using the standby resource is taught by Nguyen in a related endeavor.

Nguyen discloses as his invention a system and method for designing, developing and implementing Internet Service Provider (ISP) architectures. Specifically, Nguyen discloses the additionally recited feature of the apparatus wherein the program code is configured to use information encoded within a program temporary fix to determine the cost for using the standby resource (e.g. User / Service 'Provisioning') [0481].

It would thus be obvious to one of ordinary skill in the art at the time of the invention to modify the combination of Abrams and Swildens, with the above said feature, as disclosed by Nguyen, for the motivation of providing a method and system

that would serve as a versatile, reliable foundation, and thus allow existing service provider infrastructures to be capable of scaling to meet 'increased capacities' or delivering the new services the market demands [0029].

Conclusion

1. The Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenford Madamba whose telephone number is 571-272-7989. The examiner can normally be reached on M-F 8:30-5:00.

Art Unit: 2100

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Wallace Martin can be reached on 571-272-3440. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Glenford Madamba
Examiner
Art Unit 2151

/John Follansbee/
Supervisory Patent Examiner, Art Unit 2151